

**Public Defense Services Commission
Service Delivery Plan for Judicial District No. 1 – Jackson County
(November 20, 2008)**

Introduction

Since developing its first Strategic Plan in December 2003, the Public Defense Services Commission (PDSC) has focused on strategies to accomplish its mission to deliver quality, cost-efficient public defense services in Oregon. Recognizing that increasing the quality of legal services also increases their cost-efficiency by reducing risks of error and the delay and expense associated with remedying errors, the Commission has developed strategies designed to improve the quality of public defense services and the systems across the state for delivering those services.

Foremost among those strategies is PDSC's service delivery planning process, which is designed to evaluate and improve the operation of local public defense delivery systems. During 2004 to 2007, the Commission completed investigations of the local public defense systems in Benton, Clatsop, Coos, Curry, Lane, Lincoln, Linn, Multnomah, Marion, Klamath, Washington, Yamhill, Hood River, Wasco, Wheeler, Gilliam, Sherman, Umatilla, Morrow, Union and Wallowa Counties . It also developed Service Delivery Plans in each of those counties to improve the operation of their public defense systems and the quality of the legal services provided by those systems.

This report includes the results of the Office of Public Defense Services' (OPDS) preliminary investigation into the conditions of the public defense systems in Jackson County, a summary of the testimony and other information presented to the PDSC at its April 10, May 8, September 11 and October 17, 2008 meetings, and PDSC's service delivery plan for this county.

PDSC's Service Delivery Planning Process

There are four steps to PDSC's service delivery planning process. First, the Commission has identified regions in the state for the purposes of reviewing local public defense delivery systems and services, and addressing significant issues of quality and cost-efficiency in those systems and services.

Second, starting with preliminary investigations by OPDS and the preliminary draft of a report such as this, the Commission reviews the condition and operation of local public defense delivery systems and services in each county or region by holding one or more public meetings in that region to provide opportunities for interested parties to present their perspectives and concerns to the Commission.

Third, after considering OPDS's preliminary draft report and public comments during the Commission's meetings in a county or region, PDSC develops a "service delivery plan," which is set forth in the final version of OPDS's report. That plan may confirm the quality and cost-efficiency of the public defense delivery system and services in that region or propose changes to improve the delivery of the region's public defense services. In either event, the Commission's service delivery plans (a) take into account the local conditions, practices and resources unique to the region, (b) outline the structure and objectives of the region's delivery system and the roles and responsibilities of public defense contractors in the region, and (c) when appropriate, propose revisions in the terms and conditions of the region's public defense contracts.

Finally, under the direction of PDSC, contractors subject to the Commission's service delivery plans are urged to implement the strategies or changes proposed in the plans. Periodically, these contractors report back to PDSC on their progress in implementing the Commission's plans and in establishing other best practices in public defense management.

Any service delivery plan that PDSC develops will not be the last word on a local service delivery system, or on the quality and cost-efficiency of the county's public defense services. The limitations of PDSC's budget, the existing personnel, level of resources and unique conditions in each county, the current contractual relationships between PDSC and its contractors, and the wisdom of not trying to do everything at once, place constraints on the Commission's initial planning process in any region. PDSC's service delivery planning process is an ongoing one, calling for the Commission to return to each region of the state over time in order to develop new service delivery plans or revise old ones. The Commission may also return to some counties in the state on an expedited basis in order to address pressing problems in those counties.

Background and Context to the Service Delivery Planning Process

The 2001 legislation establishing PDSC was based upon an approach to public defense management, widely supported by the state's judges and public defense attorneys, which separates Oregon's public defense function from the state's judicial function. Considered by most commentators and authorities across the country as a "best practice," this approach avoids the inherent conflict in roles when judges serve as neutral arbiters of legal disputes and also select and evaluate the advocates in those disputes. As a result, while judges remain responsible for appointing attorneys to represent eligible clients, the Commission is now responsible for the provision of competent public defense attorneys.

PDSC is committed to undertaking strategies and initiatives to ensure the competency of those attorneys. In the Commission's view, however, ensuring the minimum competency of public defense attorneys is not enough. As stated in its mission statement, PDSC is also dedicated to ensuring the delivery of quality

public defense services in the most cost-efficient manner possible. The Commission has undertaken a range of strategies to accomplish this mission.

Service delivery planning is one of the most important strategies PDSC has undertaken to promote quality and cost-efficiency in the delivery of public defense services. However, it is not the only one.

In December 2003, the Commission directed OPDS to form a Contractor Advisory Group, made up of experienced public defense contractors from across the state. That group advises OPDS on the development of standards and methods to ensure the quality and cost-efficiency of the services and operations of public defense contractors, including the establishment of a peer review process and technical assistance projects for contractors and new standards to qualify individual attorneys across the state to provide public defense services.

OPDS has also formed a Quality Assurance Task Force of contractors to develop an evaluation or assessment process for all public defense contractors. Beginning with the largest contractors in the state, this process is aimed at improving the internal operations and management practices of those offices and the quality of the legal services they provide. In 2004, site teams of volunteer public defense managers and lawyers have visited the largest contractors in Deschutes, Clackamas and Washington Counties and prepared reports assessing the quality of their operations and services and recommending changes and improvements. In 2005, the site teams visited contractors in Douglas, Jackson, Multnomah and Umatilla Counties. In 2006, teams visited all of the juvenile contractors in Multnomah and Lane Counties and criminal and juvenile contractors in Linn and Lincoln Counties. In 2007 site teams have visited the sole juvenile contractor in Clackamas County, the largest contract office in the state in Multnomah County and the sole juvenile and criminal providers in Benton County and Columbia County.

In accordance with its Strategic Plan, PDSC has also developed a systematic process to address complaints about the behavior and performance of public defense contractors and individual attorneys.

Numerous Oregon State Bar task forces on public defense have highlighted the unacceptable variations in the quality of public defense services in juvenile cases across the state. Therefore, PDSC undertook a statewide initiative to improve juvenile law practice in collaboration with the state courts, including a new Juvenile Law Training Academy for public defense lawyers. In 2006, the Commission devoted two of its meetings to investigating the condition of juvenile law practice across the state and to develop a statewide Service Delivery Plan for juvenile law representation.

In 2007 PDSC undertook to review the delivery of public defense services in death penalty cases. A final plan for providing services in those cases was

approved by the Commission in June of 2007.

In February of 2008 the Commission began a review of the delivery of public defense services in post-conviction relief cases. That review is ongoing.

The Commission is also concerned about the “graying” of the public defense bar in Oregon and the potential shortage of new attorneys to replace retiring attorneys in the years ahead. More and more lawyers are spending their entire careers in public defense law practice and many are now approaching retirement. In most areas of the state, no formal process or strategy is in place to ensure that new attorneys will be available to replace retiring attorneys. The Commission has also found that the impact of such shortages is greatest in less populous areas of the state, where fewer lawyers reside and practice, but where the demands for public safety and functional justice systems with the requisite supply of criminal defense and juvenile attorneys are as pressing as in urban areas of the state. As a result, PDSC is exploring ways to attract and train younger lawyers in public defense practice across the state.

“Structure” versus “performance” in the delivery of public defense services.

Distinguishing between structure and performance in the delivery of public defense services is important in determining the appropriate roles for PDSC and OPDS in the Commission’s service delivery planning process. That process is aimed primarily at reviewing and improving the “structure” for delivering public defense services in Oregon by selecting the most effective kinds and combinations of organizations to provide those services. Experienced public defense managers and practitioners, as well as research into “best practices,” recognize that careful attention to the structure of service delivery systems contributes significantly to the ultimate quality and effectiveness of public defense services.¹ A public agency like PDSC, whose volunteer members are chosen for their variety and depth of experience and judgment, is best able to address systemic, overarching policy issues such as the appropriate structure for public defense delivery systems in Oregon.

Most of PDSC’s other strategies to promote quality and cost-efficiency in the delivery of public defense services described above focus on the “performance” of public defense contractors and attorneys in the course of delivering their services. Performance issues will also arise from time to time in the course of the Commission’s service delivery planning process. These issues usually involve individual lawyers and contractors and present specific operational and management problems that need to be addressed on an ongoing basis, as opposed to the broad policy issues that can be more effectively addressed

¹ Debates over the relative effectiveness of the structure of public defender offices versus the structure of private appointment processes have persisted in this country for decades. See, e.g., Spangenberg and Beeman, “Indigent Defense Systems in the United States,” 58 Law and Contemporary Problems 31-49 (1995).

through the Commission's deliberative processes. OPDS, with advice and assistance from its Contractor Advisory Group and others, is usually in the best position to address performance issues.

In light of the distinction between structure and performance in the delivery of public defense services and the relative capacities of PDSC and OPDS to address these issues, this report will generally recommend that, in the course of this service delivery planning process, PDSC should reserve to itself the responsibility of addressing structural issues with policy implications and assign to OPDS the tasks of addressing performance issues with operational implications.

Organizations currently operating within the structure of Oregon's public defense delivery systems. The choice of organizations to deliver public defense services most effectively has been the subject of a decades-old debate between the advocates for "public" defenders and the advocates for "private" defenders. PDSC has repeatedly declared its lack of interest in joining this debate. Instead, the Commission intends to concentrate on a search for the most effective kinds and combinations of organizations in each region of the state from among those types of organizations that have already been established and tested over decades in Oregon.

The Commission also has no interest in developing a one-size-fits-all model or template for organizing the delivery of public defense services in the state. The Commission recognizes that the local organizations currently delivering services in Oregon's counties have emerged out of a unique set of local conditions, resources, policies and practices, and that a viable balance has frequently been achieved among the available options for delivering public defense services.

On the other hand, PDSC is responsible for the wise expenditure of taxpayer dollars available for public defense services in Oregon. Accordingly, the Commission believes that it must engage in meaningful planning, rather than simply issuing requests for proposals (RFPs) and responding to those proposals. As the largest purchaser and administrator of legal services in the state, the Commission is committed to ensuring that both PDSC and the state's taxpayers are getting quality legal services at a fair price. Therefore, the Commission does not see its role as simply continuing to invest public funds in whatever local public defense delivery system happens to exist in a region but, instead, to seek the most cost-efficient means to provide quality services in each region of the state.

PDSC intends, first, to review the service delivery system in each county and develop service delivery plans with local conditions, resources and practices in mind. Second, in conducting reviews and developing plans that might change a local delivery system, the Commission is prepared to recognize the efficacy of the local organizations that have previously emerged to deliver public defense

services in a county and leave that county's organizational structure unchanged. Third, PDSC understands that the quality and cost-efficiency of public defense services depends primarily on the skills and commitment of the attorneys and staff who deliver those services, no matter what the size and shape of their organizations. The organizations that currently deliver public defense services in Oregon include: (a) not-for-profit public defender offices, (b) consortia of individual lawyers or law firms, (c) law firms that are not part of a consortium, (d) individual attorneys under contract, (e) individual attorneys on court-appointment lists and (f) some combination of the above. Finally, in the event PDSC concludes that a change in the structure of a county's or region's delivery system is called for, it will weigh the advantages and disadvantages and the strengths and weaknesses of each of the foregoing organizations in the course of considering any changes.

The following discussion outlines the prominent features of each type of public defense organization in Oregon, along with some of their relative advantages and disadvantages. This discussion is by no means exhaustive. It is intended to highlight the kinds of considerations the Commission is likely to make in reviewing the structure of any local service delivery system.

Over the past two decades, Oregon has increasingly delivered public defense services through a state-funded and state-administered contracting system. As a result, most of the state's public defense attorneys and the offices in which they work operate under contracts with PDSC and have organized themselves in the following ways:

1. Not-for-profit public defender offices. Not-for-profit public defender offices operate in eleven counties of the state and provide approximately 35 percent of the state's public defense services. These offices share many of the attributes one normally thinks of as a government-run "public defender office," most notably, an employment relationship between the attorneys and the office.² Attorneys in the not-for-profit public defender offices are full-time specialists in public defense law, who are restricted to practicing in this specialty to the exclusion of any other type of law practice. Although these offices are not government agencies staffed by public employees, they are organized as non-profit corporations overseen by boards of directors with representatives of the community and managed by administrators who serve at the pleasure of their boards.

While some of Oregon's public defender offices operate in the most populous counties of the state, others are located in less populated regions. In either case, PDSC expects the administrator or executive director of these offices to manage their operations and personnel in a professional manner, administer specialized internal training and supervision programs for attorneys and staff, and ensure the delivery of

² Spangenberg and Beeman, *supra* note 2, at 36.

effective legal representation, including representation in specialized justice programs such as Drug Courts and Early Disposition Programs. As a result of the Commission's expectations, as well as the fact that they usually handle the largest caseloads in their counties, public defender offices tend to have more office "infrastructure" than other public defense organizations, including paralegals, investigators, automated office systems and formal personnel, recruitment and management processes.

Because of the professional management structure and staff in most public defender offices, PDSC looks to the administrators of these offices, in particular, to advise and assist the Commission and OPDS. Boards of directors of public defender offices, with management responsibilities and fiduciary duties required by Oregon law, also offer PDSC an effective means to (a) communicate with local communities, (b) enhance the Commission's policy development and administrative processes through the expertise on the boards and (c) ensure the professional quality and cost-efficiency of the services provided by their offices.

Due to the frequency of cases in which public defender offices have conflicts of interest due primarily to cases involving multiple defendants or former clients, no county can operate with a public defender office alone.³ As a result, PDSC expects public defender offices to share their management and law practice expertise and appropriate internal resources, like training and office management systems, with other contractors in their counties.

2. Consortia. A "consortium" refers to a group of attorneys or law firms formed for the purposes of submitting a proposal to OPDS in response to PDSC's RFP and collectively handling a public defense caseload specified by PDSC. The size of consortia in the state varies from a few lawyers or law firms to 50 or more members. The organizational structure of consortia also varies. Some are relatively unstructured groups of professional peers who seek the advantages of back-up and coverage of cases associated with a group practice, without the disadvantages of interdependencies and conflicts of interest associated with membership in a law firm. Others, usually larger consortia, are more structured organizations with (a) objective entrance requirements for members, (b) a formal administrator who manages the business operations of the consortium and oversees the performance of its lawyers and legal programs, (c) internal training and quality assurance programs, and (d) plans for "succession" in the event that some of the consortium's lawyers retire or change law practices, such as probationary membership and apprenticeship programs for new attorneys.

Consortia offer the advantage of access to experienced attorneys, who

³ Id.

prefer the independence and flexibility associated with practicing law in a consortium and who still wish to continue practicing law under contract with PDSC. Many of these attorneys received their training and gained their experience in public defender or district attorney offices and larger law firms, but in which they no longer wish to practice law.

In addition to the access to experienced public defense lawyers they offer, consortia offer several administrative advantages to PDSC. If the consortium is reasonably well-organized and managed, PDSC has fewer contractors or attorneys to deal with and, therefore, OPDS can more efficiently administer the many tasks associated with negotiating and administering contracts. Furthermore, because a consortium is not considered a law firm for the purpose of determining conflicts of interest under the State Bar's "firm unit" rule, conflict cases can be cost-efficiently distributed internally among consortium members by the consortium's administrator. Otherwise, OPDS is required to conduct a search for individual attorneys to handle such cases and, frequently, to pay both the original attorney with the conflict and the subsequent attorney for duplicative work on the same case. Finally, if a consortium has a board of directors, particularly with members who possess the same degree of independence and expertise as directors of not-for-profit public defenders, then PDSC can benefit from the same opportunities to communicate with local communities and gain access to additional management expertise.

Some consortia are made up of law firms, as well as individual attorneys. Participation of law firms in a consortium may make it more difficult for the consortium's administrator to manage and OPDS to monitor the assignment and handling of individual cases and the performance of lawyers in the consortium. These potential difficulties stem from the fact that internal assignments of a law firm's portion of the consortium's workload among attorneys in a law firm may not be evident to the consortium's administrator and OPDS or within their ability to track and influence.

Finally, to the extent that a consortium lacks an internal management structure or programs to monitor and support the performance of its attorneys, PDSC must depend upon other methods to ensure the quality and cost-efficiency of the legal services the consortium delivers. These methods would include (i) external training programs, (ii) professional standards, (iii) support and disciplinary programs of the State Bar and (iv) a special qualification process to receive court appointments.

3. Law firms. Law firms also handle public defense caseloads across the state directly under contract with PDSC. In contrast to public defender offices and consortia, PDSC may be foreclosed from influencing the internal structure and organization of a law firm, since firms are usually

well-established, ongoing operations at the time they submit their proposals in response to RFPs. Furthermore, law firms generally lack features of accountability like a board of directors or the more arms-length relationships that exist among independent consortium members. Thus, PDSC may have to rely on its assessment of the skills and experience of individual law firm members to ensure the delivery of quality, cost-efficient legal services, along with the external methods of training, standards and certification outlined above.

The foregoing observations are not meant to suggest that law firms cannot provide quality, cost-efficient public defense services under contract with PDSC. Those observations simply suggest that PDSC may have less influence on the organization and structure of this type of contractor and, therefore, on the quality and cost-efficiency of its services in comparison with public defender offices or well-organized consortia.

Finally, due to the Oregon State Bar's "firm unit" rule, when one attorney in a law firm has a conflict of interest, all of the attorneys in that firm have a conflict. Thus, unlike consortia, law firms offer no administrative efficiencies to OPDS in handling conflicts of interest.

4. Individual attorneys under contract. Individual attorneys provide a variety of public defense services under contract with PDSC, including in specialty areas of practice like the defense in aggravated murder cases and in geographic areas of the state with a limited supply of qualified attorneys. In light of PDSC's ability to select and evaluate individual attorneys and the one-on-one relationship and direct lines of communications inherent in such an arrangement, the Commission can ensure meaningful administrative oversight, training and quality control through contracts with individual attorneys. Those advantages obviously diminish as the number of attorneys under contract with PDSC and the associated administrative burdens on OPDS increase.

This type of contractor offers an important though limited capacity to handle certain kinds of public defense caseloads or deliver services in particular areas of the state. It offers none of the administrative advantages of economies of scale, centralized administration or ability to handle conflicts of interest associated with other types of organizations.

5. Individual attorneys on court-appointment lists. Individual court-appointed attorneys offer PDSC perhaps the greatest administrative flexibility to cover cases on an emergency basis, or as "overflow" from other types of providers. This organizational structure does not involve a contractual relationship between the attorneys and PDSC. Therefore, the only meaningful assurance of quality and cost-efficiency, albeit a potentially significant one, is a rigorous, carefully administered qualification process

for court appointments to verify attorneys' eligibility for such appointments, including requirements for relevant training and experience.

OPDS's Preliminary Investigation in Judicial District 1 – Jackson County

The primary objectives of OPDS's investigations of local public defense delivery systems throughout the state are to (1) provide PDSC with an assessment of the strengths and weaknesses of those systems for the purpose of assisting the Commission in its determination of the need to change a system's structure or operation and (2) identify the kinds of changes that may be needed and the challenges the Commission might confront in implementing those changes. PDSC's assessment of the strengths and weaknesses of a local public defense system begins with a review of an OPDS report like this.

PDSC's investigations of local delivery systems in counties or judicial districts across the state serve two other important functions. First, they provide useful information to public officials and other stakeholders in a local justice system about the condition and effectiveness of that system. The Commission has discovered that "holding a mirror up" to local justice systems for all the community to see can, without any further action by the Commission, create momentum for local reassessments and improvements. Second, the history, past practices and rumors in local justice systems can distort perceptions of current realities. PDSC's investigations of public defense delivery systems can correct some of these local misperceptions.

On February 19, 2008, Commissioner John Potter, OPDS public defense analyst Billy Strehlow and Executive Director Ingrid Swenson visited with stakeholders in Jackson County. In addition to meeting with PDSC's contractors in the district, they also talked with judges, the trial court administrator, the District Attorney, juvenile department staff, representatives of the Citizen Review Board. Written responses to questionnaires were also received from the three contractors in the district. Copies of these responses are attached as Exhibits A, B and C.

The preliminary draft of this report was intended to provide a framework to guide the Commission's discussions about the condition of Jackson County's public defense system and services, and the range of policy options available to the Commission – from concluding that no changes are needed in this county to significantly restructuring the delivery system.

In the final analysis, the level of engagement and the quality of the input from all of the stakeholders in a judicial district may be the single most important factor contributing to the quality of the final version of OPDS's report to the Commission and its Service Delivery Plan for the district.

OPDS's Preliminary Findings in Judicial District 1

Jackson County is the sixth largest county in Oregon with a current population of 198,615. The county has experienced an increase in population of approximately one and a half percent every year for the past ten years. Medford (pop. 73,960) and Ashland (pop. 21,430) are its two major cities. There are nine other incorporated communities.⁴

The largest employer in the county is government, which includes education, the Bureau of Land Management and forest services. Fifty-two percent of the land in the county is owned by the federal government. The largest private sector employer is the health care industry, followed by retail, tourism, agriculture, manufacturing and timber.⁵

Jackson County lost more than 30% of its general fund revenue when federal forest payments were terminated in September of 2006.⁶ Unlike other counties affected by the loss, Jackson County made the necessary cuts to its budget in 2006. Those cuts included cuts to public safety agencies, which included termination of jail contracts with other counties and a loss of 100 adult jail beds, the loss of five corrections deputies, an investigator and two clerical staff; elimination of almost all misdemeanor probation; a reduction of five adult probation officers, three community justice officers, one juvenile probation officer and three adult and juvenile community justice administrators. Cuts to other critical support services included the loss of 40 positions in health and human services; termination of a program targeting at-risk mothers of newborns; significant reductions in mental health clinical staff; loss of 12 medical and mental health services staff in the jail and the community justice system; closure of an alcohol and drug transition home and the residential substance abuse treatment program for youth; and significant reductions in alcohol and drug treatment services. Cuts in these services would have been even greater if the county had not closed fifteen branches of its library system and terminated 81 library employees.⁷ The county's potential responses to the loss of federal forest funds are limited. Permanent property tax rates in each county were fixed by Measure 50. Relying on timber revenue, the county had set its property tax rate at 2.01.⁸

⁴ This data was obtained from the county's website: <http://www.co.jackson.or.us>.

⁵ *Id.*

⁶ PL 106-393, the Secure Rural Schools and Community Self Determination Act of 2000, expired in September of 2006. A one-year extension was passed by Congress and signed by the president in May of 2007. That extension expired on September 30, 2007. Association of Oregon Counties, presentation to Governor's Forest Payments Taskforce on January 23, 2008.

⁷ Libraries have since been reopened on a very limited basis but may be permanently closed if stable funding is not forthcoming. Information regarding the impact of funding cuts was provided by Trial Court Administrator Jim Adams.

⁸ The lowest rate in Oregon is in Josephine County with a permanent rate of 0.5867, the highest permanent rate is in Sherman County at 8.7141.

The Circuit Court

Jackson County comprises the First Judicial District. There are nine circuit court judges. Mark Schiveley is the presiding judge. The Jackson County Circuit Court designates some judges as primarily civil judges and others as primarily criminal judges. The court maintains a master calendar for criminal cases but civil cases are assigned to individual judges. The four judges who handle criminal cases also handle the drug court, probate matters and domestic relations cases. There are two judges assigned to juvenile cases.

Criminal Court System

Attorneys appear with clients at all in and out-of-custody arraignments. Arraignments occur daily. Trial dates are not set at arraignment. Instead a pretrial conference is scheduled for two weeks after arraignment for in-custody defendants and four weeks for out-of-custody defendants. Set-overs are usually taken in Measure 11 cases. By local court rule, cases are set for trial within eight weeks after the pretrial conference but may be continued for good cause. There are status hearings on Mondays for all cases scheduled for trial during the week. Many cases are either continued or resolved at these hearings. Jury trials are generally held on Tuesdays through Thursdays and are assigned at docket call at 8:00 on Tuesdays. Some cases are resolved at docket call. Miscellaneous criminal hearings are scheduled on Fridays including court trials, contempt hearings, and probation violation proceedings. Sentencing proceedings are scheduled daily.

Community Family Court

Jackson County's Community Family Court was established in 2001 through a collaborative effort overseen by the presiding judge. It is funded principally by grants. The court is a combination family and drug court. There are approximately 50 families involved in the court. A family is referred to the court by DHS after adjudication on a dependency petition. The district attorney must also approve of the family's involvement. Participation on the part of the parents is voluntary. Lawyers for parents and children are generally involved only at the beginning of the process although participants have access to the attorneys who represented them in the underlying juvenile dependency case and who, in most instances, continue to represent them throughout the dependency proceeding. The program generally lasts 15 to 18 months. In the earliest phase the family appears before the court on a weekly basis. In the final phase appearances may occur as infrequently as once a month. Participants are required to waive many of their constitutional rights and may be jailed for non-compliance with court directives. The court can provide access to a variety of resources to help clients succeed. Cases are staffed on Mondays, and hearings are held on Tuesdays before each of the three judges assigned to the court. The court enjoys a high success rate greatly exceeding the state average for similar courts.

DHS can be dismissed from the dependency case if adequate progress has been made, even though the family remains engaged with the court.

Drug Court

The Jackson County drug court began accepting clients in March 2006. There are currently more than 50 clients in the program and several classes have already graduated. There were 22 clients in the most recent graduating class. To date none of those who completed the program have been rearrested. This court operates on a schedule similar to the Community Family Court schedule in terms of the length of the program and the frequency of appearance. Defense attorneys are present for hearings in this court, however. These clients must enter pleas of guilty and waive laboratory analysis of drug samples in order to be admitted to the program.

Other Specialty Courts

At this time there are no plans to create other specialty courts such as DUII, mental health, or domestic violence courts because of scheduling difficulties for both the judges and the attorneys.

DUII Diversion Program

DUII cases comprise approximately 25% of the court's docket. It is estimated that 90% of DUII diversion participants successfully complete the program.

Juvenile Court System

Juvenile dependency matters are assigned to Judge Rebecca Orf. She conducts shelter hearings at 11:30 a.m. daily. Review hearings, permanency hearings and trials are usually scheduled for Wednesdays and Thursdays. Termination of parental rights trials are assigned primarily to the civil bench. Judge Lorenzo Mejia handles all of the delinquency matters. He holds detention hearings daily as needed and hears other matters on Tuesdays and Wednesdays, and trials on Fridays.

In dependency matters it is the practice for parties to appear at shelter hearings without counsel. Despite efforts by the court and public defense attorneys to arrange for counsel to be present at these hearings, it has been determined that this cannot occur under present circumstances. Instead the court instructs the party for whom counsel has been appointed to contact the attorney after court and arrange to meet with the attorney before the next court date, which is the date set for the jurisdictional hearing. If there are urgent issues regarding removal or placement the attorney can request a second shelter hearing although these are normally not held for a month or so after the initial hearing. Attorneys are appointed for children in all cases in which parents receive

appointed counsel. Jackson County has an active Court Appointed Special Advocate (CASA) program.

In Delinquency cases, much of the prosecution function is performed by juvenile court counselors. They ordinarily file the petitions and negotiate resolution of the cases. The deputy district attorney assigned to juvenile court is available for consultation and to represent the state in the few cases that go to trial.

The county has a new 40-bed detention facility and currently uses 20 of those beds for detention and 20 for assessment and evaluation, and residential substance abuse treatment.⁹ The facility also provides suitable attorney-client meeting rooms.

The court appoints counsel for approximately 95% of all youth. Attorneys are present for initial court appearances in delinquency cases.

Civil Commitment Proceedings

In addition to juvenile matters, the Jackson Juvenile Consortium handles all of the civil commitment cases in which counsel is appointed. In Jackson County it is the mental health investigator, instead of the county counsel or the district attorney, who presents the case to the court. Hearings are held at the hospital at 7:30 in the morning. Discovery is usually obtained by the attorney directly from the hospital two days prior to the hearing.

The District Attorney

Mark Huddleston is the District Attorney. He became the District Attorney of Jackson County in 1992 after serving as a deputy district attorney from 1980 to 1988 and the chief deputy from 1988 to 1992. Mr. Huddleston currently has nineteen deputies. The 2007 Legislative Assembly allocated funds for an additional half-time deputy to handle juvenile dependency cases. The county will fund the other half of that position. His office did not suffer any losses due to budget cuts and, unlike some district attorney offices, his has not been forced to limit prosecution in any category of offenses. He is able to pay a starting salary of more than \$54,000 per year so recruitment has not been a major issue for his office. Retention was a problem in the past but the salaries of senior deputies were recently increased to a more competitive level.

⁹ These beds are funded by the Oregon Youth Authority. The county also has a 16 bed shelter which is used primarily for children and youth in the custody of the Department of Human Services. In July of 2008, however, all 40 beds will be available for detention since the evaluation and treatment programs will be moving to other locations.

Two deputy district attorneys are assigned to handle juvenile matters, one does exclusively dependency cases and the other handles a combination of delinquency and dependency matters. An assistant attorney general is assigned to represent the state in termination of parental rights cases. Additional AAG assistance will be available as a result of funding received from the 2007 legislature to permit AAG review of each DHS case at five and eleven month intervals after initiation of the proceedings.

Jackson County has a “district attorney’s drug conditional discharge program” independent of the drug and family community courts. Conditions for participation are similar to those for the drug court and many of the requirements for completion are the same except that regular attendance at court hearings is not required.

Public Defense Providers

There are three public defense contractors in Jackson County.

1. Southern Oregon Public Defender

The Southern Oregon Public Defender (SOPD)¹⁰ is a private non-profit corporation established in 1985. Bert Putney organized the office and continues to serve as its administrator. SOPD also has an office in Josephine County. There are currently fifteen attorneys in the Jackson County office, five investigators, two paralegals and nine other staff members including a polygrapher and an interpreter). This office currently receives appointments in approximately two thirds of the criminal cases and one fourth of the juvenile cases in the county. Until 2006 SOPD did not contract for any juvenile cases. It assigned two attorneys to juvenile matters in the 2006-2007 contract period and has added a third under the current contract. SOPD represents clients in drug court in Jackson County and receives an annual amount to staff that court.

SOPD occupies an office in downtown Medford, close to the courthouse, the jail, the juvenile department and other county offices. The office is businesslike, attractive and well furnished.¹¹

SOPD has a five-member Board of Directors that reviews major actions by the director, makes decisions not appropriate for the administrator to make, and oversees the office’s functioning within the local criminal and juvenile justice systems. The office has a written policy manual which is distributed to all employees and which describes procedures for handling personnel matters. The office also provides attorneys with a manual outlining local procedures, forms

¹⁰ SOPD’s response to the OPDS questionnaire was attached to the original draft of this report..

¹¹ Mr. Putney indicates that he would have purchased the building had he been permitted to do so under the terms of his contract with PDSC. He believes that he could have saved a significant amount of money by owning rather than leasing the property.

and expectations. Although the office manager and the administrator oversee the work of the entire staff, training and supervision are principally provided by the attorney or staff person who is assigned to supervise each new employee.

SOPD conducts monthly in-house CLEs, sponsors CLE sessions for local attorneys emphasizing issues of particular significance to local practitioners, and sends its attorneys and staff to OCDLA and other CLE trainings in areas of more general interest. SOPD uses an informal evaluation process for attorneys and staff that is based on open and regular communication and feedback. There are plans to initiate a formal evaluation process in the spring of 2008. Underperformance is addressed by consultation, mentoring, establishment of timelines, and, when necessary, termination. Excellence is most often rewarded by acknowledgment in the presence of co-workers.

Caseloads of individual attorneys are monitored weekly and monthly.

By its own policy, as well as PDSC's, SOPD requires that every in-custody client be seen within one working day. The initial visit is usually handled by a staff person rather than the assigned attorney who generally does not meet with the client until discovery is received.

SOPD has recently implemented a client feed-back process. Clients are given a form to complete at the conclusion of the case, which is submitted to the court and then forwarded to SOPD.

Bert Putney and other SOPD attorneys and staff are active participants in the criminal and juvenile justice systems in the county, serving on numerous local public and private boards, committees and advisory groups. One attorney served on the City Council and another served as the president of OCDLA. The firm is a permanent member of the Local Public Safety Coordinating Council. Mr. Putney is regarded as a problem solver who works to make the whole system function better.

SOPD received a 13.48% rate increase for the 2008-2009 contract period. Recruitment and retention of attorneys has been a challenge for this office where attorneys' starting salaries have been significantly lower than the starting salaries of their counterparts in the district attorney's office. Under the new contract the entry level salaries were increased to \$45,000. Vacancies can now be filled in a more reasonable time. In the past it was not unusual for it to take two to three months to fill a vacancy. Mr. Putney believes that it was equally important to increase salaries for mid-range attorneys in order to increase retention of attorneys with two to four years of experience. After receiving training and experience at this office, attorneys often find better paying jobs in other areas. All of the members of the local criminal consortium, Los Abogados, came from the public defender's office.

2. Los Abogados

Los Abogados¹² was originally formed to handle only those cases in which SOPD had a conflict. Since 2002 the consortium has contracted with PDSC to handle a specified caseload that is not significantly greater than, but is not limited to, the cases in which SOPD has a conflict. There are currently seven attorneys (3.03 FTE) who provide representation under this contract. The percentage of professional time devoted to public defense cases varies among the member attorneys from 10% to 75%. Some consortium members are also members of the juvenile consortium. Los Abogados contracts to handle only criminal cases. Each of the consortium attorneys has an office located in downtown Medford within a short walking distance from the courthouse, the jail and other county offices. Each of the attorneys has staff support compensated under the contract with PDSC.

The consortium does not have a board of directors or written bylaws or operating rules. The organization has two co-administrators. When the consortium needs to add a new member the existing members discuss who might be appropriate and extend an invitation. Cases are distributed evenly among members except that some members do not handle Measure 11 cases. Lawyers are notified by the consortium administrator of their appointment to a case before 5:00 p.m. on the day the appointment notice is received. In general, the consortium reports that lawyers meet with their clients in the time frames required by the PDSC contract. Members confer with each other informally and as needed. There are no formal mechanisms for regular communication. There is no system in place for evaluating members and the consortium relies on judges and its own members' observations to make it aware of any problems that might arise. The consortium reports that it has not yet had to deal with an underperforming member but would approach a member attorney directly if a problem were encountered.

3. Jackson Juvenile Consortium

The Jackson Juvenile Consortium¹³ includes four¹⁴ attorneys (2.82 FTE) who handle both juvenile and civil commitment cases under the contract with PDSC. Each of the attorneys has a practice outside of the consortium, handling either

¹² Los Abogados's response to OPDS's questionnaire was attached to the original draft of this report.

¹³ The juvenile consortium's response to the OPDS questionnaire was attached to the original draft of this report.

¹⁴ The Consortium noted in a response to an earlier draft of this report that a fifth attorney was handling review hearings during this period even though he was not accepting new cases. In 2007 it was reported that he had 245 cases but was not included in the FTE figure provided by OPDS.

private cases or other public defense cases. Each member also has office staff persons who devote a percentage of their time to consortium cases.

The consortium has a board of directors that includes a retired circuit court judge, the former county counsel, and the former administrator of a Medford School District. It meets only sporadically, however, and plays a limited role.

The consortium has an operating agreement between members. Each of the four members owns a 25% interest in the business (organized as a limited liability company). The agreement provides that income will be allocated among members in proportion to the number of appointments they receive “which shall be aligned as close as reasonably possible to membership percentages.” It does not provide a protocol for handling performance issues except to provide that an attorney may be required to withdraw from membership if the member becomes “disabled or incompetent.”

Caseloads

The total public defense caseload in Jackson County for FYE 2006 was 7,559 cases¹⁵. For FYE 2007 it was 8,189, an 8.33% increase. Increases were in felonies and juvenile dependencies.

SOPD received credits for a total of 4,715 cases in FYE 2007 which included 775 juvenile cases and 3940 criminal cases. Los Abogados received 1,147 criminal case credits, and JJC received 98 civil commitment and 2,227 juvenile case credits.

OPDS expects the caseload in Jackson County to remain stable through the biennium assuming the court continues to conduct regular review hearings in juvenile dependency cases.¹⁶

Comments provided to OPDS Staff during February interviews:

Functioning of the criminal court system. The criminal system is functioning well. The court runs smoothly and handles cases efficiently. The distribution of cases between SOPD and Los Abogados is appropriate, with the consortium filling in the blanks “nicely” and providing excellent representation. In general, the quality of defense in criminal cases is good. SOPD has had a lot of turnover but is able to get new lawyers “up to speed” very quickly.¹⁷

¹⁵ A “case” is a unit for which OPDS awards a case credit and does not necessarily correspond to a case as defined by the court and other justice system agencies.

¹⁶ Approximately 66% of all juvenile case credits for JJC were for dependency review hearings. In calendar year 2007, reviews comprised 76% of all JJC's juvenile case credits.

¹⁷ It should be noted that the district attorney's office in Jackson County is reported to be open to plea negotiation and reasonable dispositions, even in Measure 11 cases. That may account for the relatively low trial rates in the county. For the calendar year 2007 the statewide average of

Role of contractors in the community. Bert Putney has been a major participant in the shaping of the county's justice system. His organizational skills are legendary. Despite the difficulty of attracting and retaining high quality lawyers to work at rates significantly below market levels, and other obstacles to long term financial stability such as the past prohibition on purchasing an office site, he has maintained a well structured office with a highly professional group of lawyers. Both criminal contractors participate regularly in justice system planning meetings.

Representation in juvenile delinquency cases. Some attorneys provide excellent representation to youth in delinquency cases. Attorneys for both sides are not openly adversarial. Motion practice is minimal and not many cases go to trial although sex abuse cases are tried more often than other types of cases. There are no alternative treatment options available in these cases in Jackson County. It is rare for an attorney to challenge a youth's competence even though some of the youth who come through the court have intelligence quotients in the fifties. One especially able defense attorney recently left the area to work in another county. There is a need for additional attorneys in these cases.

Representation in juvenile dependency cases. In juvenile dependency cases the need for additional attorneys is even greater.¹⁸ The scheduling of trials and other hearings has been difficult for some time¹⁹. After the public defender's office began accepting appointment in juvenile cases an additional attorney became available for appointment in each case but scheduling remains a major problem. Lack of attorney availability has also made it difficult to implement new initiatives such as settlement conferences in termination of parental rights cases. Court officials believe that the number of juvenile dependency matters will continue to increase.²⁰ A subcommittee of the local Juvenile Court Advisory Committee is attempting to address the scheduling issue. Despite recent efforts led by the court to have counsel present at initial hearings in dependency cases, the parties still appear without counsel and the effort has been abandoned. There has been improvement in the quality of representation in dependency cases in the last couple of years, at least in part as the result of the interest and attention that Judge Orf has brought to these cases. Two commentators said that in 2005 the juvenile consortium "was not working" but has now turned things around. The change was attributed in part to the fact that the public defender's office now represents clients in some of these cases. Two attorneys, one with

cases that went to trial were 4.5% of felonies and 4.4% of misdemeanors. In Jackson County 2.7% of felonies and 2.4% of misdemeanors were tried.

¹⁸ This comment was endorsed by all of the juvenile system representatives interviewed.

¹⁹ JJC notes in its written response to an earlier draft of this report that the time to jurisdiction in Jackson County juvenile matters is generally within the requisite 30 day time period.

²⁰ In addition, the practice of accepting admissions from unrepresented parents at shelter hearings that was reported to a Quality Assurance Task Force site team in 2005 has apparently ended and attorneys are now being appointed for parents and children in most cases. JJC noted that the number of **new** dependency petitions declined between 2005 and 2007.

the consortium and one with the public defender's office, were singled out as having "raised the bar" for all of the other attorneys, especially in the representation of child clients.²¹

OPDS's Recommendations for Further inquiry at PDSC's April 10, 2008 Meeting in Medford

In light of the information which came to its attention during interviews with representatives of the juvenile and criminal justice systems in Judicial District No. 1, OPDS recommended that the commission focus its inquiries and discussion at its April 10, 2008 meeting in Medford on the following topics.

Structural Issues

Although the public defense structure in Jackson County is the same for both juvenile and criminal cases – a combination of a public defender office and a consortium, it appears to be working well in the criminal area but not as well in the juvenile area.

In criminal cases both the public defender's office and the consortium fulfill their roles to the benefit of the community as a whole. Despite recruitment and retention problems at the public defender's office, the quality of representation provided by both contractors also appears to be good.

The same structural model has not proven sufficiently flexible to meet the needs of the juvenile system, however. There is an insufficient number of attorneys to handle the caseload. While the Commission has received reports in other communities such as Clatsop, Coos and Curry about the difficulty of recruiting attorneys to practice in some geographic areas, the problem in those counties was deemed to be principally a recruitment issue rather than a structural issue.

There is certainly a recruitment issue in Jackson County for both criminal and juvenile lawyers. But when caseloads reach levels that are four times higher than recommended by national standards,²² it is appropriate to consider whether the problem may lie with the particular provider or with the model itself.

²¹ Another consortium attorney was singled out, on the other hand, for generating a high number of complaints from clients and for being inaccessible to clients and the court.

²² The current contract with Jackson Juvenile Consortium (JJC) provides for appointment in 2,376 cases per year (which includes 96 civil commitments). The agreement indicates that four consortium attorneys will devote 2.82 attorney FTEs to this contract. That amounts to 842 cases per FTE attorney per year. National standards recommend appointment in no more than 200 juvenile cases per FTE per year. The standard recommended in the PDSC RFP is 250 juvenile cases per year, adjusted from the national standard to reflect the fact that additional case credits are awarded for review hearings in Oregon. Approximately 66% of JJC's case credits in FYE

The following table compares the annual caseload per attorney per year for all contractors who handle exclusively, or primarily, juvenile cases.²³

	2007 Caseload	Attorney FTEs	Attorneys	Cases per FTE	Cases per attorney	Review percentage
Jackson Juvenile	2,298	2.82	4	815	575	66%
Linn Juvenile	2,672	4.1	6	652	445	56%
JAC	8,195	13.6	18	603	455	73%
Lane Juvenile	5,405	10.8	13	500	416	73%
IDI	2,779	6.28	11	443	253	61%
MJDC	5,392	14	15	385	359	71%
JRP	4,089	13.4	18	305	227	74%
NAPOLS	756	2.8	3	270	252	89%
Average	31,586	67.8	88	466	359	

JJC is not currently seeking to add attorneys to the consortium and when asked how representation could be improved in the county, the consortium’s response was that, “More efficient use of court time through better scheduling would allow members to deliver better quality representation.”

While PDSC must recognize the need of consortium attorneys to receive an income from public defense cases that, combined with income from other sources, is adequate to permit them to continue representing public defense clients, should PDSC contract with providers for caseloads that significantly exceed accepted standards even though contractors represent that they are able to provide quality representation?

As noted below, while some concerns were expressed about the quality of representation in dependency cases, the principle concern is that such high caseloads simply preclude high quality representation in at least some cases.

2007 were for review hearings. (The number of reviews for calendar year 2007 was 1,592 or 76% of the total juvenile case credits.) The percentage was artificially high because when the public defender’s office began taking juvenile cases, they received appointment in a greater percentage of delinquency cases and new dependency cases since JJC had already been appointed in the dependency cases that were in review status. SOPD’s two attorney FTEs assigned to handle juvenile cases received 775 case credits, or 388 credits per FTE, 38% of which were for review hearings. Please note that final numbers for FYE 2007 were 2,325 case credits to JJC, 98 of which were in civil commitment cases and 2,227 in juvenile cases. The numbers in the table, which was created on April 2, 2008, were actual credits awarded for calendar year 2007 and did not include civil commitments.

²³ SOPD is not included in the table but in FYE 2007 the two FTE attorneys at SOPD who were assigned to the juvenile caseload handled 388 cases per FTE attorney, or less than half the number assigned to each JJC attorney FTE.

Alternative Models and Providers

It would probably not be feasible for OPDS to impose a strict limit on the number of FTE attorneys who would be required to provide representation under a consortium contract since there are many circumstances that might arise that would cause a consortium to exceed such limits, at least on a temporary basis. For example, if a current member withdrew or became inactive for a period of time and a replacement attorney could not be found despite earnest effort, would that amount to a contract violation?

Assuming that in future contracts the Jackson Juvenile Consortium was unwilling to commit to adding FTE attorneys to its contract, or that even if such a commitment were made that OPDS would be unable to enforce it, are there other options that the Commission could direct OPDS to pursue?

As indicated in the discussion at the beginning of this report OPDS realizes significant benefits by contracting with consortia rather than a multitude of individuals and law firms.²⁴ But in a county the size of Jackson County, contracting with individual attorneys and law firms might be a reasonable approach.

A second public defender office, possibly handling only juvenile cases, would be another option. The need for a second public defender office in this particular community is questionable in view of the cost that would be involved in establishing such an office and the role that SOPD already plays there.

A third possibility would be for OPDS to explore with Los Abogados and its members whether there are attorneys currently handling only criminal cases under that contract who might be willing to handle juvenile cases as well. Two Los Abogados attorneys are already members of JJC but their participation has not solved the problem of excessive caseloads. Expansion of this contract would carry some of the same risks as contracting with the juvenile consortium except that the overall quality of representation provided by this consortium is reported to be very good.

Quality Issues

In addition to the comments included above about the quality of representation provided by public defense contractors in Jackson County, OPDS has tabulated the results of its December, 2007 statewide survey on public defense performance. There was only one respondent who provided information about representation in criminal cases, so that information is not included here. Four respondents provided information about JJC. Those respondents indicated that

²⁴ Some of the benefits are that the administrative function is built-in to a consortium, attorneys are available to provide back-up for each other when needed, and conflicts can be reassigned without additional cost to OPDS.

although consortium lawyers possess the legal knowledge, skill and training needed for effective representation, only “sometimes” do the attorneys appear to devote adequate time and resources to each of their clients. Three of the four respondents reported that the contractor did not appear willing to receive and act upon complaints about attorney performance. Specific comments about consortium lawyers singled out one member for doing consistently excellent work, but said that others members have too many cases, are unable to schedule matters in a timely way, and have insufficient contact with their clients.

While there was some indication in interviews that the consortium was taking steps to improve its performance, the concerns expressed in the survey responses and in the interviews conducted in February of 2008 confirm that extraordinarily high caseloads are impacting the quality of representation and the functioning of the court. It is difficult to imagine that they would not. If an attorney handled 815 cases a year, assuming 20 working days a month for 12 months, that attorney would have to handle more than three cases every day from beginning to end, which in a dependency case would include receiving and processing the new case, arranging for an interview with the client, reviewing discovery, meeting with the client, conducting an investigation, retaining an expert if necessary, conferring with the expert, communicating with the other attorneys and parties in the case, informing and advising the client of what the attorney had learned, appearing in court on at least one occasion, and closing the file. A multi-day trial or other hearing would mean that the attorney would be required to process even more cases on other days. Even cases in review status require the attorney to take similar steps in every case.²⁵

The quality issues appear to be directly related to the caseload, rather than the knowledge and skills of the attorneys and would probably be resolved by a significant decrease in the caseload of each JJC FTE attorney.

Testimony Received at PDSC’s April 10, 2008 Meeting in Jackson County

Bert Putney, the Administrator of Southern Oregon Public Defender, Inc. testified that SOPD was founded in 1985; that it currently has 23 attorneys in two offices, 16 of whom work in Medford. There are administrative efficiencies that result from operation of multiple offices. In addition CLE events and the like can be organized for both offices (as well as for other providers in all southern Oregon counties) and attorneys can be sent from one office to the other to assist in case coverage. Recruitment and retention have been a problem for SOPD. Between 2004 and 2007 approximately 25 lawyers left the office, which is a turnover rate of more than 100%. Inadequate compensation is the main reason people leave but the area is also less attractive as a place to live than other areas of the state. There is a core of experienced attorneys in both offices, but it is the people with two to three years of experience who seem to leave. All of the members, but

²⁵ See Oregon State Bar “Performance Standards – 3: Specific Standards for Representation in Juvenile Dependency Cases,” Standard 3.12 – 3.14.

one, of the Los Abogados consortium came from SOPD but most of the lawyers trained by SOPD seem to go to other parts of the state. There is a significant difference in compensation levels between SOPD and the Jackson County District Attorney's office.

Mr. Putney believes that the Jackson County justice system functions very effectively. He believes that SOPD is currently handling approximately the maximum percentage of the adult criminal caseload it is capable of handling. His office, which first began handling juvenile cases in January of 2006, could, however, handle additional juvenile matters.

SOPD has an active board of directors with a very stable membership. Mr. Putney keeps the board informed about developments in the office at meetings that occur at least quarterly.

Mr. Putney has an investigator who is trained to administer polygraph examinations. He would recommend that other offices consider having a staff polygrapher as well.

Mr. Putney also recommended that the Commission consider having a single organization provide services in all of the southwestern counties in the state in order to create administrative efficiencies and improve quality. He described some recent quality control issues in the Medford office and how they were handled and said that he solicits information from the judges about the work of his attorneys on a routine basis.

Judge Raymond White said that public defense services have been very good in Jackson County. Attorneys appear to be trying the right cases although, as a former deputy district attorney, he is not sure that the district attorney's office always chooses to pursue the right cases. He would encourage defenders to be more persistent in the pursuit of plea agreements that would benefit their clients. The more persistent defenders get better offers. He noted some errors in the draft report regarding the timing of criminal trials and the reasons that additional specialty courts are not under consideration at the present time.

Doug Engle testified on behalf of the Los Abogados consortium. He said that there are five lawyers who do approximately 95 percent of the work, one who handles only Measure 11 cases, and one who is available only as a backup when needed. All of the lawyers are very experienced. Currently the consortium is receiving only about 75% of the cases contracted for in this biennium. Mr. Engle and another consortium member share the administrative duties. The members have not yet experienced a situation that would require them to have more structure in their organization. Other than the attorney who handles only Measure 11 cases, case distribution is based on rotation without distinguishing between case types except for murder cases which are on an independent

rotation schedule. The consortium has not needed to add members for the past three years.

Jim Mueller testified about the work of the Jackson Juvenile Consortium. He said that the attorneys in the consortium are all very experienced. They know the law and the juvenile court system and work hard, often working more than an eight-hour day. He discussed a number of factors which he believed made the caseloads handled by consortium members appear greater than they are. He noted that an attorney who had left the consortium approximately two years ago is now returning and will be handling a portion of the cases. He also believes that the number of new cases is less than the percentage indicated in the table on page 21. Mr. Mueller questioned the applicability of national caseload standards which refer to juvenile delinquency cases only. Mr. Mueller also informed the Commission that consortium members had met to discuss reported quality of representation issues on the part of one member and that the member is now taking steps to address the issues.

Christine Herbert said that she handles cases for both the juvenile consortium and Los Abogados and that she has not received complaints about her work. She works hard and sometimes on weekends and evenings but she enjoys her work and believes her workload is manageable. Commissioner McCrea told her that the Commission was not questioning the competence of the attorneys but inquiring whether, as a matter of policy, the Commission should be contracting for caseloads of this magnitude.

Commissioner Welch said that comparing caseloads from one judicial district to another is like comparing apples and oranges since cases are handled so differently from one district to another.

Judge Rebecca Orf said that it is a struggle to schedule juvenile cases in Jackson County because of the consortium lawyers' busy schedules. There was a time when attorneys were not visiting with child clients. They are doing better in that regard although she spoke at a meeting of the foster parents' association recently and was asked whether attorneys were supposed to call foster parents or have contact with them or their child clients. Some attorneys do better than others. There is one consortium attorney and one public defender office attorney who have really raised the bar for other lawyers.

Mark Huddleston, the Jackson County District Attorney, said that although caseloads are high in Jackson County, as they are around the state, the Commission is getting its money's worth with the public defense lawyers in Jackson County. He said there is an active Public Safety Coordinating Council in the county and that the district attorneys and the defense lawyers meet with the court on a regular basis and maintain good communication.

Vance Walliser said he had worked at SOPD for eight years as a criminal defense lawyer and then went into private practice, specializing initially in criminal defense as a member of Los Abogados. In 2005 he began taking juvenile cases as a member of the Jackson Juvenile Consortium and now devotes the majority of his time to juvenile matters. He believes that it is beneficial to have lawyers who handle mainly juvenile matters and if the consortium is forced to add new members he and others may find it necessary to take on other kinds of cases, limiting their ability to specialize. He believes that parents and children in the county receive superior representation.

Additional Information Provided after April 10, 2008

Additional Investigation:

In an effort to clarify information received during the meetings with juvenile court system representatives in February and the testimony provided at the April Commission meeting, OPDS staff interviewed additional representatives of DHS and the state as well as members of the Jackson Juvenile Consortium and obtained the following information.

It appears that, despite the fact that lawyers are not present at initial shelter hearings, representation in the early stages of dependency proceedings is generally good. Specifically, OPDS was informed that attorneys are in good contact with DHS at this stage, seek second shelter hearings in some cases, and resolve cases in a timely way. At the initial disposition attorneys have obtained and reviewed DHS file materials and the proposed plan before the hearing and are prepared to comment on the plan and argue for or against particular services.

A CRB review is the next event in most cases and for the last year or so attorneys have been appearing at and participating in these hearings.

It is at this stage, however, after the initial CRB review, when attorney engagement appears to end. One consortium attorney said that cases in review status require no attention unless a client calls and asks for specific advice or information. It was reported that lawyers “rarely” attend family meetings even though much of the planning for families occurs at these meetings. It is a relatively new practice for attorneys to visit with child clients but even though they are now visiting, they never seem to develop a relationship with even their adolescent clients because they tend to see them, if at all, just prior to a court hearing.

DHS rarely hears from attorneys between court proceedings. DHS continues to send discovery to the attorneys, including evaluation reports and the like and notifies them if there are significant changes in the client’s circumstances. One representative explained that if the attorney does not review this information as it comes in, he or she does not have a feel for what is going on in the case and

can't take appropriate measures to protect the client's interest, such as getting an independent evaluation or advocating for more appropriate treatment options. If discovery indicates a client is giving positive urinalysis test results, attorneys should be meeting with clients and talking about the implications of these test results. Twice a year DHS sends the client a list of expectations as part of the agency's mandate to make reasonable efforts to reunify families. These documents can be complicated and should be explained by the attorney. A representative of the state who works in multiple counties said that the attorneys in Jackson County are among the best in the region in terms of ability but the caseload in Jackson County prevents attorneys from providing services to clients between hearings and from attending family decision meetings nearly as often as their colleagues in Douglas and Josephine Counties. He noted that in dependency cases, involvement of the attorney through the life of the case often has a direct impact on the likelihood of a child being returned to the parents.

After a termination petition is filed, attorneys again participate actively in the preparation and presentation of the case. Lawyers for children are said to be very involved in these trials, unlike their colleagues in some counties who are said to act more like spectators than advocates in these cases.

Summary of Commission Discussion at May 8, 2008 Meeting:

At the May 8, 2008 PDSC meeting, Ingrid Swenson summarized the draft report and the testimony received at the April 10, 2008 meeting in Medford.²⁶ Commissioners were also provided with a handout, a copy of which is attached to this draft report as Exhibit B. She referred to the standards developed by the American Council of Chief Defenders (ACCD) and said that ACCD had recently performed a comprehensive review of caseload studies and literature from around the country and had determined that the original ACCD standards were "resilient" and still valid. The group advised, however, that each jurisdiction review its own case types and perform its own analysis.

She pointed to a number of the studies described in the handout and noted that some jurisdictions have adopted standards that limit the number of cases per year that attorneys should handle and others limit the number of clients at any given time that an attorney should represent. She described a pilot program in Washington State that was eventually extended to half of the counties in the state. It limited the number of juvenile dependency clients a full time public defense attorney could represent at any given time to 90.²⁷ She noted that as a result of the success of the Washington program, four Oregon legislators proposed SB 411 in the 2007 Legislature. That bill would have increased public defense funding by \$23 million statewide to limit caseloads and increase compensation in order to improve representation in Oregon juvenile cases. She

²⁶ A copy of the transcript of these comments and the Commission discussion that occurred at the meeting is attached as Exhibit A to this report.

²⁷ This number was later lowered to 80.

pointed to the final document in the handout, which described the three principle systems for measuring caseloads.

The other documents provided to Commissioners at the May meeting included a copy of the Oregon State Bar's Performance Standards for attorneys in juvenile dependency cases, a copy of a letter to Judiciary Committee Counsel setting forth a proposed PDSC plan to implement SB 411 and a copy of an email to committee counsel describing some of the things lawyers fail to do when they have excessive caseloads. The information in this email was derived from reports prepared in OPDS site visit evaluations.

JJC Response

Commissioners were also provided with a copy of a response from the Jackson Juvenile Consortium to the draft report²⁸. While taking issue with some of the information in the report, particularly the number of attorneys handling consortium cases and the caseloads per attorney, the consortium nevertheless acknowledged the need for improvement and committed to taking the following steps:

- (1) closely monitoring the number of new appointments and adding attorneys as needed;
- (2) amending the operating agreement to implement objective standards; monitoring compliance with the standards;
- (3) holding monthly consortium meetings;
- (4) addressing the need for more involvement in Family Decision Meetings in the next contract negotiations.

Additional Developments

On June 9, 2009 Judge Orf advised that since the Commission's April visit to Jackson County she had seen "marked improvement in the attorneys' efforts, particularly in representing children. In fact, the attorneys [from both the consortium and the public defender's office] were given kudos from the CASA program at our May Juvenile Court Advisory Committee meeting for their efforts to see children in their foster homes." She thanked the Commission for coming to the area and "nudging up the bar."

At its September 11, 2008 meeting the Commission heard testimony from Mark Burkhalter with the Jackson Juvenile Consortium. Mr. Burkhalter said that the consortium now has five full-time attorneys, that the group has met often to discuss the concerns raised at earlier commission meetings and that caseloads have been reduced from an average of 815 case credits per year per FTE attorney to 594. Although this number is still high it is no longer the highest in the state and the problem appears to be a statewide one. He said that the

²⁸ A copy of the response is attached as Exhibit C.

Commission's concern about the consortium's caseload came as a surprise since it had not been part of the discussion when the last contract was negotiated. In the future he believes the number of review hearing in the county might drop when the current juvenile judge retires at the end of the year. He believes attorneys are doing good work on their cases. He said he would like to see caseloads go down if compensation did not go down. It is hard to find qualified juvenile lawyers. It might be preferable to hire paralegals to maintain contact with clients and others involved in the case. The Southern Oregon Public Defender's Office currently handles approximately one third of the juvenile cases and the consortium handles the balance. Mr. Burkhalter said that he does not see it as the attorney's role to perform social work functions in the case.

Christine Herbert testified by phone and told the Commission that the report implied that consortium attorneys were not providing representation post-disposition. She said that was incorrect; attorneys were talking to their clients between hearings and sometimes attending meetings with them.

Ingrid Swenson said that caseloads are in issue in a number of jurisdictions but that it was appropriate for the Commission to have the discussion in Jackson County because JJC's caseload per FTE was the highest in the state. She said that the consortium's caseload had been an issue that was discussed with them a number of times in the past, including after a comprehensive site review. When OPDS's efforts to encourage the consortium to add attorneys failed, Southern Oregon Public Defender was asked to take a portion of the juvenile caseload. She also summarized the kinds of activities attorneys need to take on behalf of dependency clients after adjudication. These require advocacy outside the courtroom but are legitimate legal representation not social work.

Mark Burkhalter said that he and the other consortium attorneys spend the majority of their time in the courtroom and, consequently, are generally not available to attend meetings in other locations.

Mark McKechnie, the Executive Director of the Juvenile Rights Project said that although the caseloads handled by Juvenile Rights attorneys are less than half of caseloads carried by JJC attorneys, he believes that Juvenile Rights attorneys need to reduce their caseloads by 20%.

With respect to the Los Abogados consortium, Chair Ellis inquired whether some greater effort should be made to persuade the consortium to follow best practices for consortium management including a more structured management system and mechanisms to permit the consortium to take appropriate actions if members cease to perform satisfactorily. Ingrid Swenson described the information that had been made available regarding the need for such management tools as well as effective models used by other consortia but that these had always been treated as recommendations rather than mandates. She said this consortium had not experienced any difficulties to date. Kathryn Aylward expressed her

preference for imposing as few mandates as possible upon contractors because they make it more difficult to reach agreement.

A Service Delivery Plan for Jackson County

PDSC is grateful for the cooperation and hospitality extended to its staff and its members during its visit to Jackson County and the initial investigations made in preparation for that visit. PDSC expresses its sincere appreciation to all the members of the Jackson County criminal and juvenile justice communities for their assistance in informing the commission and helping to guide the creation of a service delivery plan for the county.

In light of all the information provided, PDSC approves the following service delivery plan for Jackson County.

A public defender office supplemented by a consortium to handle criminal cases and a consortium to handle juvenile cases appears to be the appropriate service delivery model for this jurisdiction. The public defender office is performing many of the essential functions of a public defense system in the county. It is training new attorneys, providing on-going education to criminal and juvenile attorneys in the area, participating in policy making bodies in the criminal and juvenile justice systems and taking on new functions as needed, such as providing representation in juvenile cases.

The criminal consortium is reported to be providing superior representation despite its lack of a well developed administrative structure.

The juvenile consortium is generally credited with providing very good representation at some stages of the proceedings and is addressing concerns regarding representation between the time of jurisdiction and the final proceedings in the case.

With respect to the appropriate expectations for attorneys handling juvenile dependency matters, whether particular recommended courses of action are denominated as “social work” or “legal work,” the Commission endorses the standards set forth in the Oregon State Bar’s Principles and Standards for Counsel in Criminal, Delinquency, and Civil Commitment Cases. These standards recognize that values that may have originated in other disciplines, such as active client outreach, knowledge of available treatment and support services, and familiarity with a client’s personal circumstances, are also essential to zealous legal representation on behalf of clients in dependency matters. The performance standards, while not mandatory in every case, are “intended to be followed in most instances.”²⁹

²⁹ Forward to the original version of the standards, p. 2. The document may be found at http://www.osbar.org/surveys_research/idth/foreword.html. PDSC views the Principles and Standards as a major component of the “Oregon standards” referred to in its statutory mandate

PDSC recognizes that excessive caseloads challenge even the ability of well-qualified attorneys to meet the needs of their clients. While caseloads in both criminal and juvenile cases in Oregon appear to exceed national standards by approximately 30% the impact is reportedly greater in juvenile cases. PDSC has proposed Policy Option Package 100 in its 2009-11 budget request that would provide an additional \$17 million to reduce juvenile caseloads. Should the agency receive any amount of funding for this purpose, OPDS will outline for the Commission at its priority setting meetings in the summer and fall of 2009 possible approaches to the allocation of the funds that would achieve the goals of reducing caseloads and improving representation.

The Executive Director will form an advisory group of juvenile contractors to (1) plan for the agency's presentation regarding Policy Option Package 100 to the Public Safety Subcommittee of the Joint Ways and Means Committee, (2) make recommendations for the use of any funds appropriated, and (3) regardless of whether additional funds are available, make recommendations to the Commission and OPDS regarding other courses of action that could be taken to improve the quality of representation in these cases.

During the course of contract negotiations, OPDS will explore with all prospective contractors the number of attorneys and the percentage of such attorneys' time that will be devoted to work under the contract and how the contractor intends to meet the needs of its public defense clients when the proposed caseload exceeds the caseload standards included in the request for proposals.

to, "Establish and maintain a public defense system that ensures the provision of public defense services ...consistent with...Oregon...standards of justice." OPRS 151.219